

AMTEC MOTORS
and
VONGAI MUZENDA

HIGH COURT OF ZIMBABWE
MUSAKWA J
HARARE, 12 January,
8 and 15 February 2006

Opposed Application

Mr *Maguchu*, for the applicant
Mr *Mushonga*, for the respondent

MUSAKWA J: This is an application for an order for respondent to surrender a motor vehicle she was issued with as part of her conditions of employment by the applicant. The motor vehicle in question is a Mazda Familia, registration number 787-342F.

The facts are that respondent was employed as a New Vehicles Sales Manager. Respondent was dismissed from this post on 23 February 2005 following a disciplinary hearing which was conducted in terms of the Labour Relations (General Conditions of Employment) (Termination of Employment) Regulations, Statutory Instrument 130/2003. The reason for proceeding under the regulations was due to the fact that applicant does not have registered employment code. The outcome of the disciplinary hearing was communicated to respondent in a letter dated 23 February 2005 by the Chairman of the Disciplinary Committee. Respondent was also advised to return all company property in her possession within forty eight hours. It appears applicant wrote another letter on 12th May 2005 but it is not part of the papers. In a letter dated 18th May 2005 respondent's lawyers refused to surrender the motor vehicle, arguing that since she had noted an appeal against the decision to dismiss her, she was entitled to continue using the motor vehicle.

At the hearing applicant's counsel submitted that respondent stands dismissed notwithstanding the purported appeal to the Labour Court. It was further submitted that applicant was supposed to refer the matter to a

labour officer in terms of section 3(4)(f) of the regulations. It was also applicant's contention that there is no provision for appealing directly to the Labour Court. It was further submitted that principles governing the noting of appeal do not apply to the present case.

Respondent opposed the application on the basis that she has appealed against the decision to dismiss her to the Labour Court and that the noting of the appeal suspends the decision appealed against. As a preliminary point respondent also contended that the High Court has no jurisdiction to determine the application by virtue of the Labour Act [*Chapter 28:01*].

In terms of section 89(1)(a) of the Act, the Labour Court is empowered to hear applications and to determine applications and appeals in terms of the Act or any other enactment. In addition, section 89(6) of the Act provides that:-

"No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application, appeal or matter referred to in subsection (1)."

There is no doubt that the issue of whether or not respondent should continue using the motor vehicle belonging to the applicant is a labour issue arising from her contract of employment whose termination is being disputed. Whether or not respondent followed the proper procedure in contesting the dismissal is for the Labour Court to decide. The present application should have been directed to the Labour Court.

The application is dismissed with costs.

Dube, Manikai & Hwacha, the applicant's legal practitioners
Messrs Mushonga & Associates, the respondent's legal practitioners